IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1136/2006
(Ramesh Kumar & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 08/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sajjan Singh for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 25.7.2006 passed by Additional Chief Judicial Magistrate No.3, Jodhpur (for short 'the trial court' hereinafter) whereby the trial court took the cognizance of the offences under Sections 147, 323, 453 and 427 IPC against the petitioners. Aggrieved by the order taking cognizance, the petitioners have filed the instant criminal misc. petition.

I have heard learned counsel for the petitioners and carefully gone through the order impugned.

It is contended by learned counsel for the petitioners that the occurrence took place on 01.10.1998 for which a first information report was lodged by the complainant on 03.10.1998. The matter was investigated by the police and on

28.12.1998, the police filed a negative final report. The trial court sent the matter for re-investigation. The matter was re-investigated and thereafter the police filed challan. The trial court by the order impugned took the cognizance of the offences.

Learned counsel for the petitioners submits that in view of the provision of 468 Cr.P.C., the maximum period for taking cognizance is three years for the offence which is punishable with imprisonment for a term exceeding one year but not exceeding three years, whereas, the offences for which the cognizance is taken are not punishable exceeding three years and in the instant case, the cognizance has been taken by the trial court after expiry of three years from the date of occurrence. Learned counsel for the petitioners has relied on a decision of Hon'ble Supreme Court in M/s Zandu Pharmaceutical Works Ltd. And Ors. Vs. Md. Sharaful Haque and Ors. AIR 2005 SC 9, wherein Hon'ble Apex court held that the learned Magistrate has issued process in respect of offence under Section 418 IPC. The punishment provided for said offence is imprisonment for three years. The period of limitation in terms of Section 468 (2)(c) is 3 years. That being so, the Court could not have taken cognizance of the offence. Section 473 of the Code provides for extension of period in certain cases. This power can be exercised only when the Court is satisfied on the facts and in

the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Order of learned Magistrate does not even refer to either Section 468 or Section 473 of the Code.

Learned counsel for the petitioners has also relied on two decisions of this Court in Baktawar Singh Vs. State 1996 Cr.L.R. (Raj.) 503 and in Prem Phutela S/o Desh Raj Vs. The State of Rajasthan 2004 (1) Cr.L.R. (Raj.) 504.

From the perusal of the order impugned, it is more than clear that the delay has been condoned by the trial court though specifically Section 473 Cr.P.C. has not been mentioned but obviously the delay has been condoned in exercise of the powers under Section 473 Cr.P.C.

Section 473 Cr.P.C. provides for extension of period of limitation in certain cases which reads as under :-

> "Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in thecircumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice."

The controversy came to be considered by Hon'ble Supreme Court in Bharat Damodar Kale Vs. State of A.P., wherein Hon'ble Apex Court considering the provisions of Chapter XXXVI Cr.P.C. held as under :-

" A cumulative reading of various provisions of Chapter XXXVI Cr.P.C. clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code.

Apart from the statutory indication, the said view also gets support from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by

> an act of the court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant."

Thus, in Bharat Damodar Kale (supra), the Hon'ble Supreme Court concluded that the limitation prescribed is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. In the instant case, the FIR was lodged within two days of the occurrence and thereafter the matter remained under investigation and thereafter with the trial court. At any rate, the complainant cannot be said to have initiated the proceeding beyond the period of limitation. More so, the delay has been condoned by the trial court in exercise of the power under Section 473 Cr.P.C., and therefore, keeping in view the decision of Hon'ble Supreme Court in Bharat Damodar Kale (supra), I do not find any merit in the petition.

The petition is therefore, dismissed.

(H.R.PANWAR),J.

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